

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**David C. Kuhlemeier
Cerro Gordo County, Iowa**

ADMINISTRATIVE ORDER

NO. 2011-AQ- **16**
NO. 2011-SW- **19**

TO: David C. Kuhlemeier
504 South 8th St.
Clear Lake, IA 50428-2571

I. SUMMARY

This administrative order requires David C. Kuhlemeier to properly dispose of solid waste, cease all illegal open burning of solid waste, and pay a penalty in the amount of \$2,000.00.

Questions regarding this administrative order should be directed to:

Relating to technical requirements:

Glenn Carper, Field Officer
Field Office 2
2300 15th St. SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 5319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which

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authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative order.

III. STATEMENT OF FACTS

1. Mr. Kuhlemeier owns property located at 4424 235th Street in Clear Lake, Iowa, 50428, in Cerro Gordo County. The property is in the SE 1/4 of the NW 1/4, Section 27, T 96N, R 22W. There was a home located at that address but it burned down in approximately 2001.

Past Violations

2. On June 11, 2004, Deputy Campbell of the Cerro Gordo County Sheriff's Department investigated a fire on Mr. Kuhlemeier's 235th Street property and referred the matter to Department Field Officer Clay Swanson. Field Officer Swanson met with Mr. Kuhlemeier on June 15, 2004 at the site and Mr. Kuhlemeier explained that the fire department and sheriff's office had been at the site the day of the burning but had not put the fire out. Field Officer Swanson observed burnt debris including wire, insulation, cans, bottles, engine parts, and household furniture. Mr. Kuhlemeier stated he was burning the items to clear the land so he could build a home onsite. Field Officer Swanson discussed the applicable air quality and solid waste regulations with Mr. Kuhlemeier and explained that he would be sending him a Notice of Violation.

3. On June 17, 2004, Field Officer Swanson sent a Notice of Violation to Mr. Kuhlemeier by certified mail explaining that the burning Mr. Kuhlemeier conducted was in violation of open burning regulations and directed him on future compliance with regard to disposal of solid waste. The correspondence also included a copy of the open burning regulations. Mr. Kuhlemeier signed for the letter on June 22, 2004.

Present Violations

4. On the night of July 19, 2010, Deputy Chris Flatness of the Cerro Gordo County Sheriff's Department observed a fire at 4424 235th Street in Clear Lake, Iowa. He contacted the dispatcher who then paged Department Field Officer Glenn Carper. Deputy Flatness stopped to investigate and found that the fire contained between six and nine semi-truck tires located at its base, a water heater, two refrigerators, a 4-cylinder engine block, metal wheel rims, and other scrap material.

5. On July 20, 2010, Field Officer Glenn Carper attempted to call Mr. Kuhlemeier at his residence at 504 S. 8th St. in Clear Lake, but was unsuccessful. Field Officer Carper then drove to the property at 4424 235th St. where the fire had been reported. He was greeted by a neighbor, Pat Thompson, who gave Field Officer Carper directions to where the fire was located. He found the fire still smoldering, and discovered the same items that Deputy Flatness reported observing, as well as a compact refrigerator, a stove, and an air conditioner unit housing. All of the plastic and rubber parts of the items had been burned away.

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6. Mr. Thompson called Mr. Kuhlemeier when Field Officer Carper arrived, and Mr. Kuhlemeier came to the property while Field Officer Carper was still there. Field Officer Carper explained to Mr. Kuhlemeier that he was in violation of the open burning regulations in Iowa and that he would be issued a Notice of Violation and would be subject to further enforcement and penalty because it was his second violation at this location. Mr. Kuhlemeier acknowledged that he had been burning the waste to clean up his property for the upcoming RABGRAI event during which people would be camping on his property.

7. Mr. Kuhlemeier explained to Field Officer Carper that he thought the regulations allowed for burning of waste that came from the site upon which the burning occurred. He stated that many of the items he burned had been dumped on his property by others and had been at the site for years. Field Officer Carper explained that Iowa's open burning laws did not exempt these wastes.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.
2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Kuhlemeier allowed the burning of various solid wastes, including tires. The above stated facts demonstrate noncompliance with this provision.
3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.
4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, the Department hereby orders Mr. Kuhlemeier to do the following:

1. In the future properly dispose of all solid waste;
2. Cease illegal open burning at this location, or any other location in the state of Iowa;
3. Mr. Kuhlemeier shall pay a penalty of \$2,000.00 within 30 days of the date the Director signs this order.

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VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a \$2,000.00 penalty. The administrative penalty assessed by this administrative order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." The cost of disposal for tires is \$4.00 each and the cost of disposal for appliances is \$13.00 each at the Landfill of North Iowa. Based on the amount of solid waste burned at this property, including the number of appliances and bead rings from tires in the burn area, it is estimated that Mr. Kuhlemeier saved about \$100.00 in disposal costs.

Gravity of the Violation -- Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$850.00 is assessed for this factor.

Culpability - Mr. Kuhlemeier has a duty to remain knowledgeable of the regulations. The open burning and solid waste disposal regulations have been in place for more than 20 years. Additionally, he was previously cited for an open burning violation in 2004 and was provided a copy of the regulations. Based on the above considerations, \$1,050.00 is assessed for this factor.

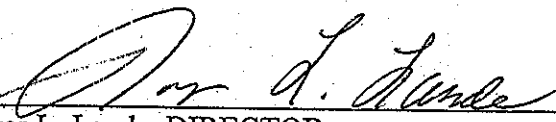
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VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director, at the address provided above, within 30 days of your receipt of this order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Ed Tormey, Chief of the Legal Services Bureau at (515) 281-8973 for more information regarding appeal procedures and resolution of this order.

VIII. NONCOMPLIANCE

Compliance with Section V. of this administrative order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative order. Failure to comply with this administrative order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.


Roger L. Lande, DIRECTOR
Iowa Department of Natural Resources

Dated this 31 day of
May, 2011.

Carrie Schoenebaum; DNR Field Office 2; EPA; VI.C and VII.C.1.